California Saw & Knife Works *and* Peter A. Podchernikoff

International Association of Machinists and Aerospace Workers, AFL–CIO; and its District Lodges Nos. 50, 66, 115, 120, 508, 720, and 751; and its Local Lodges Nos. 78, 354, 821, 946, 1125, 1327, 1871, 1916, 2024, 2227 and 2230 (Various Employers) *and* Various Individuals. Cases 34–CA–5160, 34–CB–1313, 34–CB–1314, 34–CB–1315, 34–CB–1316, 34–CB–1323, 34–CB–1324, 34–CB–1360, 34–CB–1361, 34–CB–1362, 34–CB–1363, 34–CB–1408, 34–CB–1409, 34–CB–1421, 34–CB–1422, 34–CB–1440 (4–30), 34–CB–1440 (32–48), 34–CB–1440 (50–61), 34–CB–1440 (63–64), 34–CB–1440 (67–68), 34–CB–1440 (86), 34–CB–1450, 34–CB–1451, 34–CB–1452, 34–CB–1453, 34–CB–1454, 34–CB–1455, 34–CB–1510

July 12, 1996

SUPPLEMENTAL DECISION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On December 20, 1995, the National Labor Relations Board issued a Decision and Order in this proceeding[1] in which it found, inter alia, that the International Association of Machinists and Aerospace Workers (IAM) violated Section 8(b)(1)(A) of the Act by failing to give all nonmember employees who enter a bargaining unit covered by a union-security clause timely notice of the rights guaranteed them by the statute pursuant to the United States Supreme Court's decision in *Communication Workers v. Beck*, 487 U.S. 735 (1988). Thereafter, on February 8, 1996, the IAM filed a motion to amend the Board's findings. Various Charging Parties and the General Counsel filed memoranda in opposition to the IAM's motion, and the IAM filed responses to the opposing memoranda. For the following reasons, we grant in part and deny in part the IAM's motion.

1. The IAM points out that the reference in the Board decision (slip op. at 7) to six District Lodges is in error insofar as it suggests that there are only six such lodges. The record shows that the IAM'S lodges are dispersed among six geographic territories and does not establish the precise number of District Lodges. Thus we shall amend the sentence in question to read as follows: ''The IAM, also known as the Grand Lodge, administers its *Beck* policy for its smaller District Lodges and its approximately 1400 Local Lodges (grouped, for administrative purposes, among six geographic territories).'' We agree with the General Counsel that this error had no impact on any other findings in the decision.

2. The IAM contests the statement in the decision that ''it is undisputed that the IAM failed to notify employees newly hired into the bargaining unit of their *Beck* rights at the time it first sought to obligate these employees to pay dues'' (slip op. at 12), contending that it denied the complaint allegation and that the parties had thereafter stipulated that the IAM had delegated to its district and local lodges the responsibility for giving new-hire notice. The IAM seeks dismissal of the allegation and, accordingly, elimination of any finding against it on this issue and of related references in the conclusions of law and the notice. In its reply to the oppositions filed by the General Counsel and the Charging Parties, the IAM makes clear that its chief concern is that it would be unable to comply with the Board's Order regarding notices to new hires, as it understands the Order, because it is not in a position to learn of new hires in sufficient time to give them *Beck* notices.

We see no reason to vacate our finding of a violation. It is reasonable to hold the IAM, as architect of its *Beck* policy, liable for what the record indicates is the absence of any guidelines to its locals concerning the notification of newly hired employees. In fact, the record reveals that the IAM has not established any mechanisms for even intermittent monitoring of the locals' performance of the delegated function. Also, contrary to the IAM's submission, the record does show failures of locals to give notifications to new hires. To satisfy the IAM's legitimate concern, however, concerning the feasibility of its giving notice by itself to each new hire, we clarify our Order to signify that the IAM may be deemed in compliance if it has instituted procedures ensuring that notice of *Beck* rights is given to new hires by the lodges to which the obligation has been delegated. Under this Order, if either the IAM or one of its affiliates notifies nonmember employees entering a bargaining unit of their *Beck* rights and such notice is given before or when the employees become obligated to pay dues under an applicable union-security clause, the IAM will have satisified its obligation.[2]

3. The IAM also asks the Board to correct what it terms an ''inconsistency'' in the decision between a finding regarding the sufficiency of the IAM's annual notice of *Beck* rights and the finding that the Unions had violated Section 8(b)(1)(A) by failing to provide notice to employees. The IAM contends the alleged inconsistency should be resolved by vacating the finding of a notice violation and its accompanying remedy. We disagree that there is any such inconsistency.

[1] 320 NLRB No. 11.

[2] On the other hand, if neither the Respondent IAM nor its affiliate complied with the notice obligation, then the IAM is liable for such failure to give notice in those cases where it is the 9(a) representative.

The violation found by the Board is premised on the IAM's admission that the only *Beck* notice it provides to employees is the publication of its *Beck* policy annually in the December Machinist. Thus, under the IAM's procedures, an employee hired into the unit in January, for example, would not necessarily get notice of the *Beck* policy until the following December, long after the employee would have become obligated to pay dues to the Union under the union-security clause. The delay in providing the *Beck* notice, even if the notice ultimately given was adequate, constitutes a violation of the Union's duty of fair representation in violation of Section 8(b)(1)(A). The Board's finding of that violation does not conflict with its finding that the notice in the Machinist satisfied the duty of fair representation (slip op. at 11–12), because the latter finding concerned only the sufficiency of that notice as to format and did not concern timeliness. We therefore decline to amend our findings.[3]

4. Finally, the IAM contends that the Board's conclusion of law concerning Machinists District 751 and the Boeing Corporation is inconsistent with its action in severing and remanding the case to the judge. We disagree. The issue in that case is whether hundreds of employees who had been on strike (and whose membership in the Union lapsed after they failed to pay dues for 2 months) were sent notice of the IAM's *Beck* policy either in the December 1989 issue of the Machinist, which would have been mailed during the strike, or in the previous year's issue. In our Amended Conclusion of Law 10, we found that District Lodge 751 violated Section 8(b)(1)(A) ''with respect to resigned members *who did not receive the December 1988 or 1989 issues of the Machinist*.'' [Emphasis added.] We remanded to the judge for a finding whether the resigned employees were sent either of those issues of the Machinist. As we stated (slip op. at 29), ''[W]e instruct the judge to determine, based on credible evidence, whether the Unions' procedures for disseminating the IAM publication [to employees] at this facility constituted reasonable steps to send the publication to all unit employees.'' We find no inconsistency as to this issue.[4]

Accordingly, the IAM's motion to amend the findings is granted in part and denied in part, and our decision is amended as stated in paragraph 1 above.

[3] Member Cohen found that the notice in the Machinist was not reasonably calculated to apprise nonmember employees of their *Beck* rights. 320 NLRB No. 11, slip op. at 9, fn. 41.

[4] As Member Cohen found that the notice in the Machinist was not sufficient to give employees initial *Beck* notice, he would find a violation with respect to the Boeing unit without the necessity of this remand. 320 NLRB No. 11, slip op. at 29, fn. 117.